

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

VERSO CORPORATION, et al.,

:

Plaintiffs,

v.

:

UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND
SERVICE WORKERS
INTERNATIONAL UNION, AFL-
CIO/CLC, et al.,
Defendants.

Case No. 3:19-cv-0006

JUDGE WALTER H. RICE

DECISION AND ENTRY OVERRULING PLAINTIFFS' MOTION TO
STRIKE SECTION I. B OF DEFENDANT'S REPLY MEMORANDUM
(DOC. # 68) AND SUSTAINING MOTION OF PLAINTIFFS FOR
LEAVE TO FILE SUR-REPLY (DOC. #75); DEFENDANT TO FILE ANY
RESPONSE TO PLAINTIFFS' SUR-REPLY ON OR BEFORE THE
CLOSE OF BUSINESS ON JANUARY 29, 2020.

Verso Corporation and Verso Corporation Health and Welfare Benefit Plan
(collectively "Verso"), have filed a motion to strike Section I.B. of Defendant,
United Association of Journeymen and Apprentices of the Plumbing and
Pipefitting Industry of the United States and Canada, AFL-CIO's ("Defendant UA")
Reply Memorandum in Support of Defendant UA's Motion to Dismiss, Doc. #68,
("UA Reply Memo"). Verso contends that the UA Reply Memo raised an
argument that was not made in Defendant UA's Motion to Dismiss, Doc. #43. As

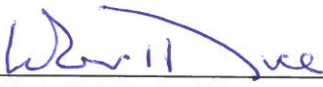
such, Verso asserts that Defendant UA's argument, that Verso's request for declaratory judgment did not seek equitable relief, has been waived and should be stricken. Doc. #75, PAGEID#1919. Alternatively, because Verso was denied an opportunity to respond to this new argument, they request leave to file a sur-reply. S.D. Ohio Civ. R. 7.2(a)(2). A proposed sur-reply is attached to Verso's motion. Doc. #75-1.

Defendant UA opposes Verso's motion and argues that Verso's response, Doc. #55, identified, for the first time, which "precise section of ERISA it was proceeding under." Doc. #76, PAGEID#1928. Accordingly, Defendant UA asserts that the first time it could respond to Verso's "new" argument was in its Reply Memo. *Id.* Although Defendant UA requests Verso's motion to strike be denied in its entirety, this Defendant also states that if the Court permits the filing of a sur-reply, that it should be given "an opportunity to enter a brief sur-reply of its own." *Id.*, PAGEID#1931.

Because this Court has the inherent power to manage its own docket, *American Civil Liberties Union of Kentucky v. McCreary County*, 607 F.3d 439, 451 (2010) (holding that "based on the district court's power to manage its own docket, the court had ample discretion to strike Defendants' late renewed motion for summary judgment"), Verso's motion to strike Section I.B. of Defendant UA's Reply Memorandum is overruled. Verso's sur reply, Doc. #75-1, will be deemed filed.

Defendant UA is granted leave to file a response to Verso's sur-reply on or before January 29, 2020.

Date: January 17, 2020



WALTER H. RICE
UNITED STATES DISTRICT JUDGE